IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 16853 of 2004

Between:

Md. Rasheed, S/o. Md. Khaja Miya,
R/o. Bholakpur, Musheerabad, Hyderabad.

..... PETITIONER

AND

1 The Chief General Manager, Hyderabad Zone, APCPDCL, Mintocompound, Hyderabad.
2 The Superintending Engineer (Assessments), APCPDCL, Himayatnagar, Hyderabad.
3 The Divisional Engineer (Assessments) APCPDCL, A.P.State Housing Corporation Buildings,
4th Floor, Street No. 17, Urdu Galli, Himayatnagar, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ, order or direction more particularly one in the nature of Writ of "CERTIORARI" calling for the records relating to the Order No. DEA/1/HYD/DAT No. 1231/Dated 07-05-2004 issued by 3rd respondent and set aside the same as illegal, arbitrary and without jurisdiction and contrary to the Lr.No.CGM/H2/HYD/D.No. 01 dated 19-4-2004 issued by the 1st respondent and consequently direct the respondents to restore the electricity supply to the petitioner service connection No. F4-10899 immediately by permitting the petitioner to pay the balance of Rs.9940/- in easy instalments in the interest of justice.

Counsel for the Petitioner: MR.D.RAMAKRISHNA

Counsel for the Respondents: MR.K.Ravindra Kumar, SC FOR APSEB

The Court made the following :

THE HONOURABLE MS.JUSTICE G.ROHINI

WRIT PETITION NO.16853 OF 2004

ORDER:

Heard the learned counsel for the petitioner and Sri Kanakamadala Ravinder Kumar, the learned Standing Counsel for the respondents.

The petitioner states that he is running a small business in premises bearing No.1-4-307/B, which is provided with power supply under service connection No.F4-10899 under non-domestic LT-II category. While so, the said premises was inspected on 20.3.2004 and thereafter the petitioner was served with the provisional assessment notice dated 31-03-2004 alleging that during the inspection it was found that the meter disk was rotating slowly even though the consumer was utilizing full load and therefore, the meter was referred for M.R.T. testing and that the loss sustained by the Department was provisionally assessed at Rs.29,819/-. Petitioner was also informed that he has to pay a sum of Rs.14,909-50 ps., being 50% of the provisional assessment together with supervision charges if he is desirous of restoration of power supply pending enquiry. It appears that subsequently on a request made by the petitioner, first respondent passed an order dated 19.4.2004 permitting the petitioner to pay the said sum of Rs.14,909/- in three equal instalments of Rs.4,970/- each payable on 19.4.2004, 19.5.2004 and 19.6.2004 respectively. The petitioner states that in pursuance of the same he paid a sum of Rs.5,000/-, however, he could not make subsequent payments. In the meanwhile, the impugned order dated 7.5.2004 has been passed by the third respondent-Divisional Engineer (Assessment) stating that a re-assessment has been conducted as sought by the petitioner and it was found that the consumer has committed pilferage of energy and therefore, he is liable to compensate the loss sustained by the Corporation as per Clause-39 under the revised terms and conditions of supply notified by the A.P.Central Power Distribution Company Limited in exercise of the power conferred

under Section 49 of the Indian Electricity Act, 1948. Accordingly the value of the misused electrical energy was confirmed at Rs.22,136/- together with the supervision charges and that the petitioner was called upon to pay the said amount of Rs.22,136/- less the amount already paid, within 30 days failing which the supply of the premises of the petitioner will be disconnected. It appears that subsequently the electricity supply to the petitioner premises has been disconnected. Now this writ petition is filed assailing the correctness of the order dated 7.5.2004.

At the outset, the learned counsel for the respondent raised an objection as to the maintainability of writ petition contending that against the impugned order, an alternative remedy is available by way of Appeal to the Superintending Engineer. The learned counsel contends that the petitioner cannot maintain this writ petition without exhausting the alternative remedy available under the law.

The learned Counsel for the petitioner submits that since the entire demand is based on the alleged mechanical defects of the Meter, the allegation of pilferage is incorrect and therefore till the disposal of the Appeal, there may be a direction for restoration of power supply.

From the material on record it is clear that out of Rs.11,068/- i.e., 50% of Rs.22,136/- as assessed by the third respondent under the impugned notice dated 7.5.2004, the petitioner has already paid a sum of Rs.5,000/-. In the circumstances, I deem it appropriate to dispose of the writ petition granting leave and liberty to the petitioner to prefer an appeal before the Superintending Engineer (Assessment), APCPDCL, Himayatnagar, Hyderabad within a period of four weeks from today on payment of the balance of Rs.6,068/-. If an appeal is filed within four weeks as indicated above together with the said sum of Rs.6,068/-, the Superintending Engineer is directed to entertain the appeal and pass appropriate orders in accordance with law. There shall also be a direction to the respondents to restore the power supply to the service connection of the petitioner immediately after payment of sum of Rs.6,068/-.

The writ petition is disposed of accordingly. No costs.

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(G.ROHINI,J)

Date: 21.9.2004.

Note:

Issue C.C.in two (2) days.

B/o

Mdaa.

COPY TO:

1 The Chief General Manager, Hyderabad Zone, APCPDCL, Mint compound, Hyderabad.
2 The Superintending Engineer (Assessments), APCPDCL, Himayatnagar, Hyderabad.
3 The Divisional Engineer (Assessments) APCPDCL, A.P.State Housing Corporation Buildings,
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4. Two C.D.copies.